



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
45 L STREET NE
WASHINGTON D.C. 20554

News media information 202-418-0500
Internet: <http://www.fcc.gov> (or <ftp.fcc.gov>)
TTY (202) 418-2555

DA No. 21-993

Report No. SCL-00329

Friday August 13, 2021

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. §1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Assignment

Grant of Authority

Date of Action: 08/11/2021

Current Licensee: Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11)**FROM:** Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11)**TO:** Hawaiian Telcom, Inc.

Application for consent to the assignment of the cable landing license for the Paniolo Cable System, SCL-LIC-20070223-00003, from the Bankruptcy Estate of Paniolo Cable Company, LLC (Michael Katzenstein, Chapter 11 Trustee) to Hawaiian Telcom, Inc. (HTI). The Paniolo Cable System is a non-common carrier, domestic fiber optic system consisting of 48 fiber pairs and serving the Hawaiian islands. The Paniolo Cable system connects the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, and Hawaii. It has four interisland subsea segments with a total of seven landings: (1) Kekaha, Kaua'i to Makaha, Oahu; (2) Hawai'i Kai, Oahu, to Kaunakakai, Moloka'i; (3) Kaunakakai, Moloka'i, to Lahaina, Maui; and (4) Makena, Maui, to Kawaihae, Hawai'i. The cable went into service in 2009. Applicants state that HTI intends to operate the cable on a common carrier basis.

On November 13, 2018, HSBC Securities (USA) Inc., Sunrise Partners Limited Partnership, and Deutsche Bank Trust Company Americas (Petitioning Creditors) jointly filed an involuntary petition for bankruptcy protection of the Paniolo Cable Company, LLC under Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Hawaii (Bankruptcy Court). On November 29, 2018, the Petitioning Creditors filed a motion with the bankruptcy court seeking the appointment of a Chapter 11 trustee for Paniolo Cable Company, LLC. On February 11, 2019 the Bankruptcy Court entered an Order appointing the Chapter 11 Trustee. On March 8, 2019, Michael Katzenstein, as Chapter 11 Trustee of the Bankruptcy Estate of Paniolo Cable Company, LLC (the Chapter 11 Trustee) notified the Commission of the pro forma assignment of the Paniolo Cable System license from Paniolo Cable Company, LLC to Paniolo Cable Company, LLC, as debtor under the control of the Chapter 11 Trustee. See Public Notice, Report No. SCL-00235, SCL-ASG-20190308-00008, Actions Taken Under Cable Landing License Act, DA 19-200 (IB rel. Mar. 21, 2019).

On November 30, 2020, the Chapter 11 Trustee and HTI entered into an asset purchase agreement pursuant to which HTI will acquire the Paniolo Cable System assets and other unregulated assets. On December 28, 2020, the Bankruptcy Court entered a sale order that, among other things: (1) authorized and approved the sale of Paniolo Cable Company's assets free and clear of all liens, claims, interests, and encumbrances; and (2) approved the asset purchase agreement. Upon consummation of the proposed transaction, HTI will be the owner and operator of the Paniolo Cable System.

HTI is a Delaware corporation that is 100% owned by Hawaiian Telcom Communications, Inc., a Delaware holding company, which is 100% owned by Hawaiian Telcom Holdco, Inc., a Delaware holding company, which is 100% owned by Cincinnati Bell, Inc. (Cincinnati Bell), an Ohio holding company. Applicants state that at this time Cincinnati Bell is publicly traded and that its shares are widely held, and that the only entity with a 10% or greater interest is BlackRock, Inc., a Delaware investment management company that owns 14.68% of Cincinnati Bell.

The Commission has granted applications regarding the proposed transfer of control of Cincinnati Bell to Red Fiber Parent LLC (Red Fiber Parent). Red Fiber Parent, a Delaware limited liability company, will acquire 100% of the stock of Cincinnati Bell. See Applications Granted For The Transfer Of Control Of Cincinnati Bell Inc. And Hawaiian Telcom, Inc. To Red Fiber Parent LLC, WC Docket No. 20-146, AU Docket No. 20-34, Public Notice, DA 21-615 (WCB/IB/WTB rel. May 26, 2021). According to the Applicants that transaction has not yet been consummated. On August 11, 2021, Applicants provided updated ownership information for Red Fiber Parent.

Upon consummation, Red Fiber Parent would directly acquire at closing 100% of the stock of Cincinnati Bell. The sole member of Red Fiber Parent is RF Topco LLC (TopCo), a Delaware limited liability company formed at the direction of MIP V (FCC) AIV, L.P. (MIP V), a Delaware limited partnership. The sole member of TopCo is Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. At the time of closing, RF Holdings would be majority owned (65.8% equity) and controlled by MIP V RF Partners, L.P. (MIP V Member), a Delaware limited partnership, which, in turn, would be majority owned (64.77% equity) and controlled by MIP V. Both MIP V and MIP V Member are funds managed by Macquarie Infrastructure Partners Inc. pursuant to agreement with the funds' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), which is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA). MIRA is ultimately wholly owned and controlled by Macquarie Group Limited (MGL), a publicly traded Australian company that provides banking and investment services.

RF Holdings would be indirectly minority owned by (i) certain U.S.-organized alternative investment vehicles (Ares AIVs) and certain U.S.-organized co-invest entities, all managed by the Private Equity Group of Ares Management Corporation (Ares Management), a Delaware entity (an aggregate 17.6% equity interest); and (ii) Retail Employees Superannuation Trust (REST), a widely held Australian public offer pension fund managed by Retail Employees Superannuation Pty Limited (Rest Trustee), as trustee of the fund (16.6% equity). REST's indirect interest in Red Fiber Parent will be held by Rest Nominees No. 2 Pty Ltd as trustee for REST US Infrastructure No. 2 Trust (Rest Immediate Entity). The sole beneficiary of Rest Immediate Entity is REST Nominees No. 1 Pty Ltd, as trustee for the Rest International Infrastructure Investments Holding Trust (Rest Intermediate Entity). The sole beneficiary of Rest Intermediate Entity is REST. The ultimate beneficial owners of Rest Trustee are Shop, Distributive and Allied Employees' Association (SDA), an Australian entity, with 50% of the beneficial interest, and the following foreign individuals, each with 12.5% of the legal and beneficial interest, as nominees of employer sponsors: Steven John Priestly (Australia and United Kingdom), Catriona Noble (Australia), Vaughn Nigel Richtor (Australia and United Kingdom), and Sally Louise Evans (Australia and New Zealand). MIP V Member, the Ares AIVs, and Rest Immediate Entity would have the right to appoint directors of RF Holdings and Cincinnati Bell based on their equity interests in RF Holdings. As of the effective time of the merger, MIP V Member will have five votes, Ares Management will have two votes, and REST will have one vote on the boards of RF Holdings and Cincinnati Bell. Additionally, there will be two independent and/or non-member appointed directors of each of RF Holdings and Cincinnati Bell.

We grant the Petition to Adopt Conditions to Authorizations and Licenses filed in this proceeding on August 3, 2021, by the National Telecommunications and Information Administration on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. Accordingly, we condition grant of the application on compliance by Hawaiian Telcom Inc. with the commitments and undertakings set forth in the Letter of Agreement from Christopher J. Wilson, Vice President and General Counsel, Hawaiian Telcom Inc. to the Chief, Foreign Investment Review Section, Deputy Chief, Compliance and Enforcement, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, dated July 23, 2021 (LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of this authorization and the underlying cable landing license and thus grounds for declaring the cable landing license terminated without further action on the part of the Commission. Failure to meet a condition of the authorization may also result in monetary sanctions or other enforcement action by the Commission. The Petition and the LOA may be viewed on the FCC's website through the International Bureau Filing System by searching for SCL-ASG-20210122-00006 and accessing the "Other Filings related to this application" from the Document Viewing Area.

HTI certifies that it accepts and will abide by the routine conditions specified in 47 CFR § 1.767(g).

This authorization is without prejudice to the Commission's action in any other related pending proceedings.
